

## Message

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**From:** Kazempoor, Kelly [kazempoor.kelly@epa.gov]  
**Sent:** 6/28/2019 7:35:36 PM  
**To:** AO OPA OMR CLIPS [AO\_OPA\_OMR\_CLIPS@epa.gov]  
**Subject:** daily news clips 6/28/19

### Energy

E&E News: How 4 states view Trump's carbon rule

E&E Daily: Kennedy blocking nominees over exemptions

Reuters: U.S. senator says he's blocking USDA nominees over biofuel waivers

### Chemicals

Chemical Watch: EPA releases draft TSCA evaluations for 1,4-dioxane, HBCD

Bloomberg Environment: New Hampshire Plans Strict Water Limits for Nonstick Chemicals

Bloomberg Environment: Workers Face Undue Risks From Some Solvent Exposures, EPA Says

Bloomberg Environment: Three Flame Retardants' Use Is Dropping, Controlled, EPA Says

E&E Daily: PFAS bills on fast track, but supporters want more

The Hill: Senate vote requires military, EPA to deal with harmful 'forever chemicals'

Bloomberg Environment: All Sides Agree EPA Should Use Legal Powers on Chemicals

Bloomberg Environment: Frequent Foes Unite to Urge EPA to Boost Chemical Data Gathering

Politico Pro: Senate passes defense bill with PFAS, carbon capture provisions

Bloomberg Environment: Solvent, Flame Retardants Largely Cleared in EPA Risk Analyses

### Air

Bloomberg Environment: New York to Finally Enforce Its Cleaner-Diesel Law (of 2006)

Bloomberg Environment: Sterigenics Plant Could Reopen Under New Permitting Plan (1)

EcoWatch: EPA Air Quality Chief Resigns Over Ethics Investigation

### Mining

Bloomberg Environment: Opponents of Pebble Mine Weigh Options in Wake of EPA Lifeline

## Energy

### E&E News

**How 4 states view Trump's carbon rule**

<https://www.eenews.net/energywire/2019/06/28/stories/1060665317>

**Edward Klump and Hannah Northey**

Before last November's elections, more states would have embraced President Trump's new carbon rule, but Democrats flipped seven Republican governor's mansions, leaving 26 of the Lower 48 states in GOP hands and 22 under Democratic control.

Critics say the Affordable Clean Energy (ACE) rule, which EPA finalized this month, won't meaningfully tackle carbon emissions and could allow more coal-fired plants to stay online. Proponents say it gives more flexibility to states than the Obama-era Clean Power Plan.

How will states handle the final ACE rule? Stay tuned. They have three years to develop their plans — with the big wild card being what happens to Trump's November 2020 reelection bid.

ACE puts state environmental regulators in the driver's seat to determine the effect on individual coal-fired power plants. The role of attorneys general could complicate matters in states where the governor and attorney general aren't of the same party.

Several states that opposed the Clean Power Plan have since switched sides in the debate. Following recent political shuffles, Nevada, Colorado and Michigan have all stepped away from a joint legal challenge to the Obama rule. New Jersey and North Carolina bowed out of the anti-Clean Power Plan coalition after earlier changes in political leadership.

It's unclear who will join anticipated litigation over the Trump rule. What's more, market forces are dictating energy trends that make the rule less relevant.

David Littell, a former member of the Maine Public Utilities Commission and former chairman of the board of directors for the Regional Greenhouse Gas Initiative (RGGI), said the market has shifted with falling prices for renewable energy and widespread closure of coal plants.

"You'll see fewer supporters of ACE than you saw detractors of the Clean Power Plan," Littell said.

E&E News spoke with officials from four states across the political spectrum to learn more about what to expect on ACE in the months ahead.

## **Maryland**

The final ACE rule has landed like a thud in Maryland, a state reliant on nuclear power, coal and gas.

Maryland Environment Secretary Ben Grumbles in an interview this week called EPA's final rule a "big disappointment," saying it makes it harder — not easier — for states to collaborate and make progress in reducing carbon emissions from the power sector. Maryland, which backed the Obama-era Clean Power Plan, is reviewing its legal options, Grumbles said.

Ben Grumbles. Photo credit: Maryland Department of the Environment  
Ben Grumbles. Maryland Department of the Environment

Maryland is partnering with other states in the U.S. Climate Alliance, as well as RGGI, which Grumbles chairs. RGGI will soon add a 10th member when New Jersey participates in 2020, Grumbles noted, adding that there are other states interested in the benefits of the program.

Those state efforts will only strengthen, he said.

"The legal analysis in the rule and the backing away from the encouraging states to impose emission controls beyond the fence lines at the particular power plant, that's not helpful, and it's discouraging, but we have authority under our state program — just like several other states do — to cap emissions anyway, reduce coal and natural gas power plant emissions," Grumbles said. "We're confident we'll be able to do that, to continue to do that."

But Grumbles also said that without a "federal driver" to reduce emissions, "leakage" could potentially occur. That could mean states without a cap on power plant emissions could export "dirty energy" into neighboring states that are pushing for cleaner energy through a regional cap-and-trade program.

When asked whether the rule would provide a lifeline for older coal-fired power plants, Grumbles replied, "I don't know. It's certainly on the radar of a lot of states that want to continue to make real progress and look at legal options but also continue to build support in programs like the cap-and-invest program that RGGI has."

## **Kentucky**

Coal has long been important to Kentucky, and that remains true today, even as the fuel struggles to compete in much of the country.

Gov. Matt Bevin (R), who faces a reelection challenge from state Attorney General Andy Beshear (D) this fall, is a Trump ally.

The Bluegrass State previously went after Obama's Clean Power Plan in court, but a Kentucky environmental official outlined a path to develop an ACE plan that's satisfactory to EPA.

Sean Alteri. Photo credit: Kentucky Department for Environmental Protection  
Sean Alteri. Kentucky Department for Environmental Protection

Sean Alteri, deputy commissioner of the Department for Environmental Protection in the Kentucky Energy and Environment Cabinet, said the ACE rule provides "regulatory certainty" for companies to make appropriate decisions.

There will be a unit-by-unit analysis of existing coal-fired generating facilities to help determine appropriate emissions reductions, Alteri said. There are some 43 coal-fired power units subject to the rule in Kentucky, he said, with 39 of those operating.

"It would not be prudent if we shut down units before they have reached their remaining useful life," Alteri said. "And that'll be a factor that is considered in the state plan as we develop it."

Coal-fired power accounted for about 75% of Kentucky's net electricity generation in 2018, according to the U.S. Energy Information Administration. It said only nine U.S. states had a lower average residential retail power price in March 2019 than Kentucky.

Tyler White, president of the Kentucky Coal Association, said the ACE rule can help preserve the coal fleet. He said it doesn't force premature closures of plants needed for energy production and grid security and reliability.

Low power costs help attract businesses and affects payroll taxes and the ecosystem the economy is built on, White said. He called for research and development investments that could help coal plants maintain or boost efficiencies.

Louisville Gas and Electric Co. and Kentucky Utilities Co. — which are part of PPL Corp. — noted plans to curb emissions in addressing a question about ACE.

"We look forward to reviewing the rules and working closely with the state to ensure these are implemented in the best interests of our customers," the companies said. "We remain committed to improving the environment, and that includes reducing CO2 emissions."

LG&E and KU, in partnership with PPL, indicated a goal to lower carbon emissions 70% from 2010 levels by 2050.

"That includes economically retiring coal-fired power plants over time and replacing them with a mix of renewables and natural gas," LG&E and KU said.

Beshear's campaign website mentions climate change and rising energy bills.

"Climate change is real, and Kentucky needs an all-the-above energy policy that includes renewables and clean-coal technology," the site says.

## **Nevada**

The Nevada governor's mansion switched to the blue column after Gov. Steve Sisolak won in November.

Nevada doesn't expect a huge impact from the ACE rule because it only has three operating coal-fired units.

Bradley Crowell. Photo credit: Nevada Department of Conservation and Natural Resources

Bradley Crowell. Nevada Department of Conservation and Natural Resources

But Sisolak signed a bill this year with a 50% renewable electricity standard for power providers such as NV Energy by 2030 — and a goal of 100% carbon-free power by 2050.

"I think under Gov. Sisolak as a Democrat you'll see both leading by action and being more vocal specific to climate impacts and needing to address climate change in addition to the economic arguments for clean energy," said Bradley Crowell, director of the Nevada Department of Conservation and Natural Resources.

In the long term, Crowell said Nevada hopes to be a "clean energy exporter." While transmission and generation hurdles need to be cleared, he said, strong emission-reduction rules and policy mechanisms in other states are relevant for Nevada.

NV Energy, the state's biggest electric utility company, recently announced a large solar and storage plan. In a statement to E&E News, Jennifer Schuricht, a spokeswoman, said the company will remain on a path toward serving customers with 100% renewable energy.

"The Public Utilities Commission of Nevada approved NV Energy's 2018 integrated resource plan, which seeks the conditional retirement of NV Energy's North Valmy Generating Station coal-fired Unit 1 in northern Nevada by 2021," Schuricht said. "NV Energy expects to retire or divest 100% of its coal generation with the closure of Valmy coal-fired Unit 2 by the end of 2025."

Elspeth DiMarzio, a senior campaign representative with the Sierra Club's Beyond Coal campaign, said in an email that more states need to be like Nevada. And she expressed hope that a state renewable standard will shutter the last coal plant in the state.

Greg Lovato, administrator of the Nevada Division of Environmental Protection, indicated the state will take its time in reviewing the rule.

"We're trying to be supportive of, you know, efforts across the nation for states to enable themselves to be able to address greenhouse gas emissions," Lovato said. "But we just have to do a specific analysis of this rule, which we haven't completed yet, to determine whether or not litigation's appropriate or whether joining litigation's appropriate."

## **Alabama**

News of the Trump administration's ACE rule is receiving a relatively warm welcome in the Heart of Dixie.

Ron Gore, head of the air quality division of the Alabama Department of Environmental Management, said the rule means state regulators within the next three years will need to require the coal-fired utilities that are subject to the rule to basically study what sort of "tuneup" their plants may need to comply, changes that could affect everything from their boilers to generation.

Ron Gore. Photo credit: Alabama Department of Environmental Management  
Ron Gore. Alabama Department of Environmental Management

"It's really kind of like looking at your car to see if you need new spark plugs, new tires to make it run better," Gore said.

While Gore declined to weigh in on whether EPA's rule was necessary, he said he believes it's lawful — unlike the Clean Power Plan. He also said it's been the state agency's position that Congress — not EPA — should make the decision on whether to reduce greenhouse gas emissions.

"I do think this one is lawful because it does what the 111(d) process is supposed to do, it stays within the plant's boundaries," he said.

As for how big a change the rule may bring to the state's power plants, Gore pointed to Alabama Power Co., where many measures have already been taken to install such equipment and make efficiency improvements.

Even so, the state has already seen a large drop in coal-fired electricity, he said. Whereas the state just years ago had about 36 individual coal units, only about 10 units currently operate in Alabama, he said.

He blamed previous EPA rules that winnowed down coal's viability, as well as the cratering cost of natural gas.

#### **E&E Daily**

##### **Kennedy blocking nominees over exemptions**

<https://www.eenews.net/eedaily/2019/06/28/stories/1060665941>

**Marc Heller**

Louisiana Republican Sen. John Kennedy said yesterday he's blocking three Agriculture Department nominees over Secretary Sonny Perdue's involvement in biofuel policy and won't relent until the secretary retreats.

At issue are the exemptions EPA grants small refineries from biofuel blending requirements in cases of economic hardship, a policy that has pit petroleum interests against the ethanol industry, pulling EPA into the middle.

Perdue, representing rural and farm interests, has publicly urged EPA to be less generous with the waivers.

The nominations of Scott Hutchins for undersecretary of agriculture for research, education and economics; Mindy Brashears for undersecretary for food safety; and Naomi Earp as assistant secretary are in limbo as a result.

But they've been on the job most of the year because Perdue appointed them to positions with the same functions but not requiring confirmation.

"Please be advised that I will end my efforts to block these nominees when the USDA ceases to be involved in all issues involving small refinery hardship waivers including the SRE application process," Kennedy wrote Perdue in a letter, referring to small refinery exemptions.

Kennedy went on to say he is "deeply troubled" by reports Perdue is trying to influence EPA's decisions on the exemptions, which the senator said runs afoul of the Clean Air Act. That law spells out that EPA holds authority over biofuel mandates and dictates policy on hardship exemptions.

Perdue's efforts threaten thousands of jobs and violate congressional intent, Kennedy said.

Yesterday's letter came a day after Kennedy and other lawmakers wrote to EPA Administrator Andrew Wheeler, urging him to resist calls from ethanol advocates to halt the exemptions.

The senator told Perdue he supports granting exemptions at the full level requested by refiners, rather than partial ones, and that volumes of ethanol waived shouldn't be assigned to other refiners — a step urged by the ethanol industry.

#### **Reuters**

##### **U.S. senator says he's blocking USDA nominees over biofuel waivers**

<https://www.reuters.com/article/us-usa-biofuels-usda/u-s-senator-says-hes-blocking-usda-nominees-over-biofuel-waivers-idUSKCN1TT25D>

**Reporting by Chris Prentice; writing by Richard Valdmanis; Editing by Susan Thomas**

Senator John Kennedy of oil refining state Louisiana is blocking the confirmation of three senior appointees to the Department of Agriculture until the department butts out of parts of the administration's biofuels policy, according to a letter he sent this week to Agriculture Secretary Sonny Perdue.

FILE PHOTO: Senator John Kennedy (R-LA) takes questions from reporters following a policy luncheon in Washington, U.S. March 12, 2019. REUTERS/Erin Scott/File Photo

The move underscores the rising sensitivity of U.S. biofuel regulations requiring ethanol in gasoline, which have split the rival oil and corn industries and torn President Donald Trump between two key constituencies in his reelection campaign.

Kennedy told Perdue in the letter dated June 27 that he was attempting to block the confirmation of three appointees now pending the Senate until USDA “ceases to be involved in all issues involving small refinery hardship waivers” under the U.S. Renewable Fuel Standard.

The RFS requires refiners to blend billions of gallons a year of ethanol to help farmers and cut dependence on foreign petroleum imports, but allows small refineries in financial distress to secure waivers to avoid the often costly obligation.

Since Trump took office, the Environmental Protection Agency – which administers the RFS - has more than tripled the number of waivers granted, including to small facilities owned by companies like Exxon Mobil and Chevron, as well as billionaire investor Carl Icahn.

This has pleased oil interests but enraged the corn industry, which argues the expansion marks an abuse of the regulation and threatens demand for ethanol. Perdue has often sided publicly with farmers on the issue, and told farmers at an event in Iowa this month that he had spoken to Trump about it and was helping to devise a fix.

“We’re going to see what we can do about that,” he said.

Kennedy said in his letter he believes the administration’s handling of the small refinery waiver program has helped support tens of thousands of jobs across the country.

“I am deeply troubled by reports that you, in your role as Secretary of Agriculture, are attempting to influence the decisions on small refinery waivers at the EPA,” he wrote.

The appointees pending Senate confirmation include Scott Hutchins as Undersecretary for Research, Education, and Economics; Mindy Brashears as Undersecretary for Food Safety, and Naomi Earp as Assistant Secretary.

“Please be advised that I will end my efforts to block these nominees when the USDA ceases to be involved in all issues involving small refinery hardship waivers, including the SRE application process,” he wrote.

## **Chemicals**

### **Chemical Watch**

#### **EPA releases draft TSCA evaluations for 1,4-dioxane, HBCD**

<https://chemicalwatch.com/79327/epa-releases-draft-tsca-evaluations-for-14-dioxane-hbcd>

**Kelly Franklin**

In draft TSCA risk evaluations for two substances, the US EPA has provisionally determined that the solvent 1,4-dioxane poses an unreasonable risk to workers in certain circumstances. But it has proposed to conclude that the flame retardant HBCD does not present such concerns to human health or the environment.

Release of the evaluations comes as part of the agency’s ongoing work to assess the safety of an initial batch of ten substances under the reformed TSCA.

Under the 2016 Lautenberg amendments to the law, the EPA is required to finalise these assessments by December, with a possible six-month extension. Where the agency finds a substance presents unreasonable risk under its conditions of use, it must take steps to mitigate those concerns.

#### 1,4-dioxane

The primary use of 1,4-dioxane is as a solvent in commercial and industrial applications, including in the manufacture of other substances, as a processing aid and in adhesives and sealants.

And although the substance is present as a contaminant in consumer products, the agency determined this was outside the scope of the evaluation, despite NGO concerns that excluding such conditions of use is unlawful. It identified no other consumer uses.

In its draft evaluation, the agency said that other environmental statutes it administers "adequately assess and effectively manage risks" from 1,4-dioxane to the general population, including children. It therefore did not evaluate hazards or exposures to this group.

It also found no unreasonable risk to the environment or to occupational 'non-users' – those who work in the general area of the substance's use but do not come in direct contact with it.

It did, however, identify unreasonable worker risk in certain circumstances. These are:

- domestic manufacturing;
- processing as a reactant, non-incorporative processing and recycling;
- intermediate use and for certain processing aids;
- use as a laboratory chemical;
- use as an adhesive and sealant;
- for "other uses", including printing and printing compositions; and
- disposal.

Where findings of unreasonable risk are upheld in the final evaluation, the agency will have two years, with a possible extension, to impose measures to manage them.

#### HBCD

The primary use of the cyclic aliphatic bromide cluster (HBCD) is as a flame retardant in construction materials, including foam insulation. But according to the EPA, its use has "declined dramatically" in recent years, as companies have transitioned to alternatives.

In support of its initial findings that the substance does not pose an unreasonable risk to the general population, workers or occupational non-users, the agency stated: "HBCD is no longer domestically manufactured or imported in the US".

And for the eight conditions of use the agency looked at in its review – including foam and resin panel recycling, automobile replacement parts, and disposal of construction waste – the EPA also found no unreasonable risk to the environment.

#### Next steps

Once formally published in the Federal Register, there will be a 60-day public consultation on the evaluations.

The drafts are set to undergo peer review by the Science Advisory Committee on Chemicals (SACC) at a weeklong meeting from 29 July to 2 August. A preparatory virtual meeting to discuss the scope and clarity of draft charge questions will take place on 10 July.

The agency stated that its findings may change in response to comments from its scientific experts or the public.

The draft evaluations are the second and third released by the agency of the first ten chemicals it is assessing. The first, for pigment violet 29, was issued in November of last year and was subject to peer review by the SACC last week.

The remaining substances undergoing assessment as part of the initial group are:

1-bromopropane (1-BP);  
asbestos;  
carbon tetrachloride;  
methylene chloride;  
N-methylpyrrolidone (NMP);  
tetrachloroethylene (Perc); and  
trichloroethylene (TCE).

And earlier this year, the agency identified a group of 20 high priority candidates that are slated to begin the evaluation process in December.

### **Bloomberg Environment**

#### **New Hampshire Plans Strict Water Limits for Nonstick Chemicals**

<https://news.bloombergenvironment.com/environment-and-energy/new-hampshire-plans-strict-water-limits-for-nonstick-chemicals>

**Adrianne Appel**

- New Hampshire proposes water limits for four types of PFAS
- If approved in July would be among the lowest in the nation

New Hampshire would slash the amount of certain fluorinated chemicals it allows in drinking water under limits the state proposed June 28.

New Hampshire proposed the new limits for four types of per- and polyfluoroalkyl substances (PFAS) chemicals after reviewing the “most recent and best science available,” the Department of Environmental Services said.

If approved by a legislative panel July 18, the draft standards would take effect Oct. 1, 2019, and be among the lowest limits in the nation.

The Department of Environmental Services proposed limits of 12 parts per trillion of perfluorooctanoic acid (PFOA); 15 parts per trillion of perfluorooctanesulfonic acid (PFOS); 11 parts per trillion of perfluorononanoic acid (PFNA); and 18 parts per trillion of perfluorohexanesulfonic acid (PFHxS).

#### **Public Systems**

The limits are intended to “ensure greater protection of public health related to the consumption of drinking water,” according to the Department of Environmental Services. The limits would apply to public drinking water systems serving 25 or more people over 60 days a year.

If a system were found to exceed the PFAS limits, it would have to provide another source of drinking water to residents and businesses and take remedial action.

The limits also would apply to groundwater and to treated and untreated wastewater that is discharged into groundwater.

#### **Tougher State Limits**

New Hampshire’s proposed limits are far lower than the 70 parts per trillion of PFOA and PFOS—individually or in combination—that the EPA recommended in a nonenforceable health advisory.



New Hampshire is one of a growing number of states to set limits for PFAS that are stricter than the EPA's advisory. PFAS chemicals are widely used as nonstick coatings in textiles, food packaging, industrial membranes, and in firefighting foam and have been found in drinking water nationwide.

The EPA has linked PFOA and PFOS to birth defects, liver damage, thyroid problems, some cancers, and immune system disturbances at sufficient levels of exposure.

The EPA also has said it plans to eventually set nationwide limits on PFAS but it hasn't yet done so, and states are taking matters into their own hands. There are thousands of types of PFAS, and only a handful have been closely studied for safety.

New York has a limit of 10 parts per trillion of PFOA and has proposed a ban on PFAS in firefighting foams. Michigan has proposed a limit of 6 parts per trillion of PFOA. New Jersey last year proposed limits for three types of PFAS.

#### PFAS Found

The New Hampshire limits are designed to be protective of the most sensitive populations over a lifetime and to take into consideration treatment costs and benefits, according to the department.

The detection of high concentrations of PFAS in private drinking water wells in New Hampshire and Vermont in 2016 prompted the states to pay close attention to the chemicals. Both states embarked on testing programs of water and contaminated sites. In addition, New Hampshire is considering limits on PFAS pollution emitted through the air.

The well water contamination was traced to a former manufacturing plant in Bennington, Vt., now owned by Saint-Gobain Performance Plastics. The company has agreed with demands of both states to extend public water lines to families affected, among other steps.

The New Hampshire Business and Industry Association wasn't immediately available to comment.

#### **Bloomberg Environment**

##### **Workers Face Undue Risks From Some Solvent Exposures, EPA Says**

<https://news.bloombergenvironment.com/environment-and-energy/workers-face-undue-risks-from-some-solvent-exposures-epa-says>

**Pat Rizzuto**

- Pharmaceutical, chemical workers face some health risks from solvent 1,4-dioxane, agency says
- Draft agency analysis, open for comment, to be critiqued by non-agency scientists July 29-Aug. 2

A solvent and processing aid used to produce pharmaceuticals, chemicals, agrochemicals, and other products could pose an unreasonable risk to workers making and using it, the EPA said June 28.

If the Environmental Protection Agency makes its preliminary conclusion about the solvent, 1,4-dioxane (CAS No. 123-91-1), final following public comment and scientific critique, the agency is required to propose a rule within a year to reduce the unreasonable risks it identified.

That rule, however, wouldn't target water utilities' specific concerns about reducing concentrations of 1,4-dioxane in the source water supplies they treat when processing them into safe drinking water.

The EPA released its draft risk assessment of 1,4-dioxane, one of first 10 chemicals in commerce that the agency is examining under the 2016 Toxic Substances Control Act amendments.

The agency will accept comment on the document for 60 days following its official release in the Federal Register.

A panel of non-agency scientists also will peer review the document from July 29-Aug. 2, the agency said June 28.

The agency's decision to hold the peer review meeting before the public has fully reviewed the documents is a major departure from past practice, Liz Hitchcock, acting director of Safer Chemicals Healthy Families.

It also "makes a sham of the public comment process," she told Bloomberg Environment.

#### BASF Ceased U.S. Production

About 1 million pounds of 1,4-dioxane were made in the U.S. in 2015, the most recent year for which the EPA received corporate summaries of chemical production and importation volumes.

Two companies, the BASF Corp. and another business that has declared its very name to be confidential business information, produced and/or imported the solvent that year, according to EPA data.

BASF ceased U.S. production of 1,4-dioxane in October 2018, BASF spokeswoman Donna Jakubowski told Bloomberg Environment.

She wasn't able to immediately confirm whether the company still imports more than 25,000 pounds, which would trigger a reporting obligation to the EPA.

The updated information from BASF is consistent with a July 2, 2018, letter it sent the EPA stating that it would shift its U.S. production of 1,4-dioxane to a manufacturing plant it owns in Germany.

#### Workplace Concerns, Exposures

1,4-dioxane is a likely human carcinogen, the EPA said. At sufficient exposures, it also may cause liver and kidney damage.

A variety of workers could be exposed to 1,4-dioxane at concentrations that pose undue risks to their health, the agency said.

The workers include an estimated 78 employees at sites that make the chemical; between 38 and 149 individuals involved with importing and repackaging the chemical; and about 178,000 workers that spray a chemical mixture containing it during polyurethane foam production.

#### Intentional, Unintentional Uses

The risks the EPA identified for workers wouldn't occur in unexposed staff at the same manufacturing sites, nor the in general population, or the environment, the agency said.

That conclusion is partly based on the exposures the agency included in and omitted from its risk analysis.

The EPA's analysis focused on situations in which companies intentionally use 1,4-dioxane to make other compounds.

The agency didn't, however, examine drinking water or consumer exposures to 1,4-dioxane.

The chemical gets into a wide array of goods as a "byproduct," a chemical that's created unintentionally during the production of items such as antifreeze, cosmetics, deodorants, dyes, greases, paint strippers, and shampoos. Those products get washed down the drain where they, and the chemicals in them, can get into drinking water supplies.

The agency may evaluate water and unintentional types of exposures to 1,4-dioxane in the future, the agency said.

States

Water and consumer exposures are among the the drivers that are prompting states to take action on 1,4-dioxane.

The New York state Legislature passed a bill (A.6295/S.4389) June 21 that would prohibit the use of the chemical in household cleaning, cosmetic, and personal care products to help prevent water contamination. The governor has yet to sign or veto the measure.

Drinking water utilities, such one operated by the Barnstable Department of Public Works in Cape Cod, Mass., are upgrading their treatment facilities to reduce 1,4-dioxane and other chemicals.

Earlier this year, Barnstable offered a contract out to bid for a \$12 million Maher Filtration Plant Project, Hans Keijser, superintendent of the Barnstable Water Supply Division said.

The contract is focused on removing 1,4-dioxane, per- and polyfluoroalkyl substances (PFAS), and naturally occurring iron and manganese.

### **Bloomberg Environment**

#### **Three Flame Retardants' Use Is Dropping, Controlled, EPA Says**

<https://news.bloombergenvironment.com/environment-and-energy/three-flame-retardants-use-is-dropping-controlled-epa-says>

**Pat Rizzuto**

- Three persistent, toxic flame retardants don't warrant further controls, according to EPA
- International efforts underway to reduce reliance

Three flame retardants that most countries are striving to eliminate don't pose enough concerns to warrant regulatory controls, the EPA said June 28.

The Environmental Protection Agency released its [preliminary conclusion](#) after spending 2 and 1/2 years examining the health and environmental risks of the flame retardants. The agency refers to the chemicals by either of two names hexabromocyclododecane (HBCD) and the cyclic aliphatic bromide cluster.

"EPA concludes that HBCD does not present an unreasonable risk of injury to health for workers, occupational non-users, consumers, and the general population by inhalation, oral, or dermal exposure under all conditions of use within the scope of the risk evaluation," including vulnerable populations such as children and the elderly, the agency found.

The flame retardants are primarily used for insulation in homes and commercial buildings and in welding solder paste, but also are found in automobile replacement parts.

Comments are invited on the EPA's draft [risk evaluation](#) 60 days after it appears in the Federal Register. The agency's analysis also will be [critiqued](#) by a panel of science advisers July 29-Aug. 2.

### **Top 10 List**

Hexabromocyclododecane—the singular name for the three flame retardants—is among 10 chemicals the EPA is required to evaluate under the 2016 Toxic Substances Control Act (TSCA) amendments.

The Chemical Abstracts Service numbers for two of the flame retardants are 25637-99-4 and 3194-55-6, but none is available for the third.

Congress overhauled the chemicals law to require the agency to start examining chemicals that have been made, imported, or used in the U.S. but haven't had their potential risks evaluated.

After public comment and scientific peer review, if the EPA determines that the flame retardants don't pose an "unreasonable risk," that finding can be challenged in court.

The final conclusion also would have implications for states wanting to regulate the flame retardants, as they would be prevented from regulating any specific uses the federal EPA looked at and deemed acceptable.

The EPA's environmental review flagged potential risks to land-based mammals, but the agency said its approach used cautious assumptions that allowed it to conclude that HBCDs' environmental risks were negligible.

The agency also found that workers wearing protective gear like gloves and masks were safe but that some occupational risks remain if personal protective equipment isn't used.

### **International Actions**

Production and use of the chemicals has been steadily falling over the last decade, as substitutes become available.

Concerns about the flame retardants' ability to persist in the environment and build up in the food chain—combined with their potential to harm the nervous system, reproduction, and development in people and wildlife—has prompted most countries to work towards eliminating them.

Of the countries that are party to the Stockholm Convention, 171 of the 188 nations agreed in 2013 to move toward eliminating the flame retardants. The global treaty controls chemicals that persist, build up in the food chain, are toxic, and travel across the globe far from where they were made or used.

The U.S. is among the few developed countries that never ratified the convention, but domestic manufacture of the flame retardants has ceased, the EPA said.

The Albemarle Corp. stopped producing HBCD in 2016 and doesn't intend to resume making it, the EPA said. The Chemtura Corp., now part of Lanxess, told the agency it stopped making the flame retardants in 2015, the EPA said.

Many downstream industries—including electronics and textile manufacturers—that formerly used the flame retardants have stopped doing so, the EPA said.

In addition, automobile makers no longer use the chemicals except in about 155 replacement parts.

Decreased use of HBCD spurred the EPA to omit many older applications from its risk evaluation. For example, the agency didn't look at possible risks stemming from a large category of recycled products that might have contained HBCD.

Ongoing applications the EPA did examine include hexabromocyclododecane's use in making plastics like polystyrene, insulating foams, and auto parts.

The agency also examined risks from construction and demolition wastes in landfills but concluded they are reasonable.

Given that at one time millions of pounds per year were manufactured, EPA says "reductions in environmental and biological concentrations will likely occur gradually over a period of time for this persistent and bioaccumulative compound."

### **E&E Daily**

#### **PFAS bills on fast track, but supporters want more**

<https://www.eenews.net/eedaily/2019/06/28/stories/1060665799>

**Ariana Figueroa**

In an effort to pass legislation quickly to address toxic chemicals in drinking water, lawmakers are deploying multiple strategies to funnel money for cleanups and research, and attaching policy provisions to must-pass bills.

What actually makes it to the president's desk, however, remains uncertain, with leaders plotting different tactics.

The chemicals, per- and polyfluoroalkyl substances, or PFAS, were once used to make nonstick cookware, food packaging and firefighting foam often used in military bases.

The class of toxins known as "forever chemicals" are now linked to numerous health conditions, including cancer and thyroid issues, according to research from the Centers for Disease Control and Prevention.

A bipartisan group of lawmakers successfully attached several PFAS bills from the Environment and Public Works Committee onto the Senate's National Defense Authorization Act, S. 1790, which passed yesterday, 86-8 (E&E News PM, June 27).

"I think that's the fastest route to get it to the president's desk," said EPW Chairman John Barrasso (R-Wyo.), who championed the language with ranking member Tom Carper (D-Del.) and Sen. Shelley Moore Capito (D-W.Va.).

The PFAS amendments to the Pentagon bill would add the class of toxic chemicals to the list of contaminants tracked by the U.S. Geological Survey. They also would require EPA to set a drinking water standard.

The language calls on public utilities to test tap water for PFAS and the Department of Defense to phase out the use of firefighting foam containing PFAS by 2023, and would mandate manufacturers report any water or air discharges of the chemicals through the Toxics Release Inventory.

Still, Carper said he is disappointed language that he called "the most important" didn't make the cut.

It would have required EPA to designate PFAS as hazardous substances under the Superfund law, an issue that divides Senate Republicans and Democrats.

"The one way to make sure that there's actually a cleanup and it does not fall on local and state governments are that there is a listing [of PFAS] as hazardous substances that would trigger CERCLA," Carper said, referring to the Superfund law.

Barrasso acknowledged the friction between the two sides. "I know that Senator Carper's been focused on using Superfund money and we're still working that out, but we're not there yet," Barrasso said.

Capito shares this view and said more time is needed to discuss the proposal. "I don't think it was ready to be amended onto this bill," she said about putting Carper's proposal into the NDAA.

#### **House package coming**

In the House Rep. Paul Tonko (D-N.Y.) says he plans to introduce a PFAS package before the August recess (E&E Daily, May 7).

Tonko, chairman of the House Energy and Commerce Subcommittee on the Environment and Climate Change, said his panel isn't rushing to attach PFAS amendments to spending packages or other bills. Instead, it is working on garnering bipartisan support for the issue, he said.

"I know it affects all districts," he added. "I'm hoping we can talk through the strategy of contaminants related to PFOS, PFOA, PFAS."

Tonko may want to pursue major policy in a legislative package, but PFAS language has peppered fiscal 2020 spending bills.

One provision would provide \$60 million to clean up military base contamination. Another would require exposure assessments.

The House NDAA, H.R. 2500, includes language to test firefighters' blood and push the Pentagon to phase out the chemical in firefighting foam.

And in conference talks to marry each chamber's defense bills, backers of Capito-Barrasso-Carper language will be pushing for it to make it into law.

Several lawmakers have also introduced proposed amendments on PFAS to the House NDAA, up for debate in the coming weeks.

Rep. Darren Soto (D-Fla.), for example, says he wants to use quantum computing to address exposure.

"It's continuing on with the movement we have in Energy and Commerce to regulate, isolate and eventually remove a lot of PFAS chemicals from different products," he said.

"I think the series of bills that we got through Energy and Commerce is a good start to what we're trying to do," Soto said. "We'll be looking for other opportunities, as well."

#### **The Hill**

#### **Senate vote requires military, EPA to deal with harmful 'forever chemicals'**

<https://thehill.com/policy/energy-environment/450706-senate-vote-requires-military-epa-to-deal-with-harmful-forever>

**Rebecca Beitch**

The Senate passed a defense bill Thursday that would require an increased response from the government to harmful chemicals that have leached into water in at least 43 states.

Included in the National Defense Authorization Act (NDAA) is language that would push the Environmental Protection Agency (EPA) to set a national drinking water standard for a class of chemicals known as PFAS that have been linked with cancer and other health problems.

The EPA has said it will decide by the end of the year whether to regulate the chemicals that are so persistent in the environment they've been deemed "forever chemicals."

PFAS is used in a staggering number of products, including firefighting foam, which the bill directs the military to stop using.

A move by Congress to force a drinking water standard would be significant and ultimately require local governments to keep PFAS in water below a certain level. Currently, the EPA recommends water contain no more than 70 parts per trillion of PFAS, but many states, tired of waiting for the EPA, have set more stringent standards far below that figure.

The bill also directs the Department of Defense to take more aggressive action on PFAS following accusation that the Pentagon was trying to weaken EPA regulations that would force the military to take on expensive cleanup costs now estimated at around \$2 billion.

The bill pushes the Pentagon to finalize agreements with states for cleaning up PFAS contamination caused by the military largely through the use of firefighting foam. The military would have three years to phase out use of the foam.

Other provisions would also force the EPA to consider barring new uses of PFAS and require PFAS manufacturers to share data on their production.

But the Senate version does not make Superfund cleanup money available for places where PFAS has contaminated drinking water, something Sen. Tom Carper (D-Del.) has been pushing for.

"The provisions we secured in this legislation will improve both the federal government's understanding of and response to PFAS contamination. The Department of Defense's use of firefighting foam containing PFAS is a significant source of this contamination," he said. "The use of these chemicals in firefighting foam has undoubtedly saved lives, but the cruel irony is that those same life-saving chemicals can endanger lives when they wind up in a glass of drinking water."

He added, "While the provisions we included in this package are an important start, I am disappointed that we were unable to successfully include the legislation I introduced with Senator Capito that would designate PFAS as hazardous substances under the Superfund law, and I will continue to fight to ensure that important measure is enacted into law."

The House is still reviewing its version of the NDAA, and Rep. Debbie Dingell (D-Mich.) has included such a measure to require the EPA to include PFAS under the Superfund law.

Environmental groups hailed the bill as an important first step in dealing with the growing PFAS problem.

"The first step to addressing this catastrophe is knowing where PFAS pollution is coming from and understanding how far it has spread. This legislation will go a long way in doing just that. Much more needs to be done to address the crisis, but monitoring the scope of PFAS pollution will lay the groundwork for further progress," Scott Faber, with the Environmental Working Group, said in a statement.

The Senate version also includes a number of other environmental measures, including funding for research into carbon capture.

## **Bloomberg Environment**

### **All Sides Agree EPA Should Use Legal Powers on Chemicals**

<https://news.bloombergenvironment.com/environment-and-energy/all-sides-agree-epa-should-use-legal-powers-on-chemicals-56>

**Chuck McCutcheon**

Entities that normally disagree over how the EPA implements the nation's primary chemicals law concur it should use its legal powers to get exposure data and other information from chemical companies, Pat Rizzuto writes.

- The EPA "has yet to use that authority even one time" since the Toxic Substances Control Act was overhauled in 2016, says Michal Freedhoff, director of oversight for Democrats on the Senate Environment and Public Works Committee.
- Industry attorneys and EPA science advisers are also urging the agency to collect more data to inform its chemical decisions.

## **Ex-NRDC Lawyer Helps Call Democrats' Environment Shots**

Rep. Jared Huffman's past as a Natural Resources Defense Council attorney irks some Republicans—but the Democrat from California says the experience makes him better at his job, Stephen Lee writes.

- As chairman of the House Natural Resources Subcommittee on Water, Oceans, and Wildlife, Huffman has been in the thick of issues ranging from blocking offshore oil and gas drilling to protecting endangered species. The panel's ranking Republican, California's Tom McClintock, says of Huffman's complaints about the committee's

fractiousness: “He comes from the NRDC. His frustration stems from fact that we’ve done things their way since the 1970s, and it’s not working.”

- On issues outside of his coastal California district, Huffman acknowledged that he’s “not always the right messenger,” but said he feels compelled to act. As an example, he cited his recent amendment to a spending bill that would block the Army Corps of Engineers from continuing permitting work on the Pebble Mine gold and copper project in Alaska.

### What Else We’re Watching

- Senate Majority Leader Mitch McConnell filed for cloture on Peter Wright’s nomination to be an assistant administrator for the EPA’s Office of Solid Waste. Democrats and environmentalists have raised concerns about Wright, who spent nearly two decades as a top lawyer at the Dow Chemical Co., and he wasn’t confirmed in the last Congress.
- The Senate confirmed Lane Genatowski as director of the Energy Department’s Advanced Research Projects Agency-Energy, as well as Robert Wallace to be assistant secretary of the Interior for fish, wildlife, and parks. Both nominees were confirmed last night by voice vote.
- The EPA is expected today to release for public comment and peer review draft evaluations of whether two or three chemicals have an unreasonable potential to injure people or the environment. The chemicals would come from a list of 10 compounds that the agency is currently reviewing. Of those 10 chemicals, only pigment violet 29 has already been released.
- Water Research Foundation CEO Peter Grevatt joins officials from New Jersey, Ohio, and Oregon at a Capitol Hill briefing on harmful algal blooms.
- The EPA’s Board of Scientific Counselors discusses sustainable water issues.

### All About: Mississippi’s Oyster Woes

The future looks bleak for oyster catches off Mississippi, as freshwater continues flushing through a Mississippi River spillway into the Gulf of Mexico.

Over 90% of oysters on Mississippi reefs have died, according to state environmental officials. Oyster fisherman are being advised to look for other work to make mortgage and car payments.

“If we’re lucky, and we close this thing off right now, and we have no more disasters, we may have more oysters in about 10 years that we can harvest,” said Ryan Bradley, executive director of Mississippi Commercial Fisheries United Inc.

Oyster boats can’t even count on shrimp harvests this summer to cover their losses. “The overall catch is low” since that season opened June 20, with state monitoring trawls showing the brown shrimp catch down over 80% compared with the five-year average, according to the Mississippi Department of Marine Resources.

Gulf fisheries that saw tens of millions of dollars’ worth of restoration projects after the 2010 BP Deepwater Horizon oil spill are showing the effects of previous openings of Bonnet Carre, the spillway, in 2016, 2018, and early 2019, Bradley said.

“This is cumulative,” he said. “This is worse than the oil spill.”

The governors of both Mississippi and Louisiana have requested a federal fisheries declaration from the U.S. Department of Commerce to help secure financial assistance for fishermen and other industries hit hard by marine deaths.

There was some good news from Gulf waters: no dolphin and sea turtle deaths have been reported in Mississippi since June 16, according to the Institute for Marine Mammal Studies and Mississippi State University. Federal scientists are



investigating whether the freshwater intrusion is contributing to an unusually high number of bottlenose dolphin deaths in the Gulf of Mexico, including 130 along the Mississippi coast. —*Jennifer Kay*

## Insights

### Hydrogen May Be the Next Clean Energy Game Changer

Efforts to limit rising global temperatures means all decarbonization options must be on the table, including hydrogen. But while some countries are moving forward with hydrogen technology and adoption, the U.S. lags, writes Lee Beck of the Global CCS Institute.

## Daily Rundown

### Top Stories

#### Senate Defense Bill Makes Radical Changes to PFAS Regulation

Federal agencies will have to significantly change the way they regulate a class of potentially toxic nonstick chemicals if a defense bill that passed the Senate becomes law.

#### Michigan Pushes Stringent PFAS Drinking Water Rules

Michigan is charging ahead with some of the most stringent drinking water standards for fluorinated chemicals in the nation, while acknowledging the rules may have to be updated to reflect evolving science.

## Energy/Natural Resources

### U.S. Seeks Supreme Court Hearing on Atlantic Coast Pipeline Plan

The U.S. Solicitor General has asked the Supreme Court to intervene in the fight to build a natural gas pipeline across sections of the scenic Appalachian Trail.

### Michigan Attorney General Sues to Shut Enbridge Oil, Gas Line

Enbridge Inc.'s "Line 5" oil and gas pipeline should be decommissioned to prevent risk of an "extraordinary, unreasonable threat" to the Great Lakes, Michigan's attorney general said in a lawsuit that could pose the biggest danger to date for continued operation of the 66-year-old pipeline.

## Environment

### Petroleum Official Doubts EPA Will Finish Ozone Review by 2020

A petroleum industry official is doubting whether the EPA will be able to complete its review of national air quality standards for ozone by 2020.

### Salmon Farm Suit Survives Due to Risk of Future Escapes

The Washington State salmon farm that accidentally released 200,000 non-native fish into the Puget Sound couldn't convince a federal judge to throw out claims that it is continuing to pollute the water.

## Bloomberg Environment

### **Frequent Foes Unite to Urge EPA to Boost Chemical Data Gathering**

<https://news.bloombergenvironment.com/environment-and-energy/frequent-foes-unite-to-urge-epa-to-boost-chemical-data-gathering>

#### **Pat Rizzuto**

- Critics, backers of EPA's handling of chemicals law agree that EPA should demand data
- Democratic senators have asked EPA to describe data-gathering policies

The EPA should use its legal powers to get exposure and other data from chemical companies, according to representatives of organizations that normally disagree over how the agency implements the nation's primary chemicals law.

The EPA "has yet to use that authority even one time" since the Toxic Substances Control Act was overhauled in 2016, said Michal Freedhoff, director of oversight for Democrats on the Senate Environment and Public Works Committee.

The Environmental Protection Agency's decision not to use that authority is "egregious" and shows the agency is failing to implement the TSCA amendments as Congress intended, Freedhoff said at a June 24 event titled "TSCA: Three Years Later."

Industry attorneys and EPA science advisers also are urging the EPA to collect more data to inform its chemical decisions.

### **Data Analysis**

These varied voices are referring to a major change Congress made in 2016 when it amended the nation's primary industrial chemicals law.

Republicans and Democrats agreed in those amendments that the EPA should be able to demand toxicity, exposure, or other chemical data from companies, even though those studies can be costly.

The combination of basic "physical chemical" data that shows how a chemical moves through the body and the environment—combined with toxicity data—allow the agency to determine if that chemical could be hazardous.

Exposure data allow the EPA to assess if communities, workers, wildlife, plants, or the ozone layer, for example, would be harmed by a hazardous chemical.

Exposure information is particularly helpful to the EPA in assessing how chemicals are used in the workplace and other settings, and what risks those "conditions of use" pose when weighing possible regulations.

The EPA didn't reply to repeated email requests for comment on whether it plans to require companies to provide the agency existing or newly generated information on their chemicals.

### **'New Chemical Bias'**

The EPA now has the authority to require companies that make and import chemicals to provide data, Lynn Bergeson, managing partner with Bergeson & Campbell PC, which represents chemical companies.

"We urge it to use that authority," she said at the TSCA forum organized by the Environmental Law Institute, George Washington University, and Bergeson & Campbell.

The EPA's data gathering approach doesn't treat new, yet-unmanufactured chemicals the same as compounds already in commerce, said Bergeson, whose law firm manages the TSCA New Chemicals Coalition. Through that coalition, chemical manufacturers share information on how the agency assesses new compounds.

The EPA seeks toxicity and other information from companies that want to make a new chemical that's never been produced before, she said. But the agency isn't asking for the same information about chemicals already on the market.

That preserves a long-standing "new chemical bias" the agency wrestled with even before TSCA was amended, she said.

The alleged bias refers to new chemicals facing tougher safety standards before they can get on the market, while older chemicals can remain in commerce under the sometimes untested presumption that they're safe. People concerned by this alleged bias argue that it hinders the entry of possibly safer chemicals into commerce.

In most other TSCA implementation efforts besides data requests, the "EPA has faithfully implemented what's in the law," Bergeson said.

### **June Deadline**

Members of the EPA's Science Advisory Committee on Chemicals also urged the agency to require companies to provide more data.

Workplace monitoring data, inhalation toxicity, and skin-sensitization tests are types of information the agency could get from companies to evaluate worker exposure risks as TSCA requires the agency to do, said panelists critical of the agency's draft risk evaluation of Pigment Violet 29 during a June 18-21 meeting.

In addition, five Democratic senators who backed the TSCA amendments in 2016 voiced strong concerns about the agency's decisions not to request data, in a June 20 [letter](#) to EPA Administrator Andrew Wheeler.

The letter referred to the agreement by Republicans and Democrats to increase EPA's data-gathering authorities as "one of the areas of greatest bipartisan consensus in TSCA reforms."

"It is impossible to ensure the safety of chemicals and protect human health and the environment without having solid information about a chemical's risks," said Sens. Tom Udall (D-N.M.), Cory Booker (D-N.J.), Ed Markey (D-Mass.), Jeff Merkley (D-Ore.), and Sheldon Whitehouse (D-R.I.).

They gave EPA until the end of June to answer a series of questions about its data-gathering policies.

Chemical manufacturers and product makers also should be offering and generating new information to submit to EPA, Bergeson said.

"Business needs to be more engaged," she said. "We are all challenged to help move the needle forward. We don't have to wait for EPA to do it all."

### **Politico Pro**

#### **Senate passes defense bill with PFAS, carbon capture provisions**

<https://subscriber.politicopro.com/article/2019/06/senate-passes-defense-bill-with-pfas-carbon-capture-provisions-3505802>

**BY KELSEY TAMBORRINO**

The Senate on Thursday passed its annual defense policy bill, S. 1790 (116), including a host of provisions to tackle toxic chemical contamination in drinking water and boost carbon capture technology.

The chamber voted 86-8 to pass the fiscal 2020 National Defense Authorization Act and also adopted by voice vote a substitute amendment of 93 uncontroversial amendments that includes a three-year phaseout of the military's use of toxic PFAS chemicals in firefighting foam.

The package also includes compromise PFAS legislation from the Senate Environment and Public Works Committee that would require EPA to set an enforceable drinking water limit within two years for the chemicals PFOA and PFOS, the two best-studied chemicals in the PFAS class.

The package would require EPA to monitor and take concrete steps on other PFAS chemicals as more is learned about their health risks, and it contains provisions requiring public reporting on emissions and data reporting under the Toxic Substances Control Act.

The NDAA also calls on the Defense secretary to finalize a cooperative agreement with states and local water utilities to add testing, removal and remedial actions for PFAS contamination stemming from the Defense Department, and it would require the DoD to provide blood testing for firefighters exposed to PFAS, among other provisions.

The package, however, does not include language designating the PFAS class of chemicals as a hazardous substance under the Superfund law — a top priority for many communities that sought that measure to force the entities responsible for the contamination to pay for clean-ups.

EPW ranking member Tom Carper (D-Del.) cheered the legislation's passage as an improvement to "both the federal government's understanding of and response to PFAS contamination," though he said in a statement he was disappointed the amendment he and Sen. Shelley Moore Capito (R-W.Va.) introduced designating PFAS as hazardous substances under the Superfund law was not included.

"I will continue to fight to ensure that important measure is enacted into law," he said.

The NDAA package also included another top EPW priority — Chairman John Barrasso's bill, S. 383 (116), cosponsored by a bipartisan group of 16 senators, to support the development of carbon capture and sequestration technology.

Barrasso (R-Wyo.) said in a statement he worked with Armed Service Committee Chairman Jim Inhofe (R-Okla.) to attach that USE IT Act to the NDAA.

"I want to make American energy as clean as we can, as fast as we can, without raising costs on families," Barrasso said. "The best way to do that is through innovation, not government regulation."

The Senate NDAA measure must now be reconciled with the House's version of its defense policy bill. The House is scheduled to consider that bill once lawmakers return from the July Fourth congressional break.

Already, several amendments have been filed to the House Rules Committee to the bill related to PFAS, including Michigan Rep. Debbie Dingell's amendment that would require EPA to list PFAS chemicals as hazardous substances under Superfund within one year.

"The first step to addressing this catastrophe is knowing where PFAS pollution is coming from and understanding how far it has spread," said Scott Faber, senior vice president for government affairs at the Environmental Working Group, of the Senate's version.

"This legislation will go a long way in doing just that. Much more needs to be done to address the crisis, but monitoring the scope of PFAS pollution will lay the groundwork for further progress," he added.

## **Bloomberg Environment**

### **Solvent, Flame Retardants Largely Cleared in EPA Risk Analyses**

<https://news.bloombergenvironment.com/environment-and-energy/solvent-flame-retardants-largely-cleared-in-epa-risk-analyses>

**Pat Rizzuto**

- 1,4-dioxane's ongoing uses mostly okay, a few could pose undue health risks to workers
- Three flame retardants don't pose unreasonable risks, so won't be regulated, EPA says

A solvent and processing aid that BASF Corp. has manufactured to produce other pharmaceuticals, chemicals, and pesticides doesn't generally pose sufficient health or environmental risks to warrant regulation, the EPA has concluded in a draft review.

Workers might face undue risks in a few circumstances in which they could be exposed to the solvent, 1,4-dioxane, the Environmental Protection Agency said in a draft risk [evaluation](#) released June 28.

If the EPA later issues that conclusion as final, it would be required to propose one year later some type of regulation to control uses of the solvent.

A group of three flame retardants would not unduly put people's health or the environment at risk, the agency said in a separate draft [analysis](#) of those chemicals.

If the agency issues that conclusion as final it would not develop new regulations to control the chemicals, known by either of two names hexabromocyclododecane (HBCD) and the cyclic aliphatic bromide cluster.

Both risk evaluations will be open for public comments and critiqued by a panel of independent science advisers from July 29-Aug. 2, the agency also said June 28.

The two draft chemical assessments are the second and third of 10 to be released by the EPA to fulfill requirements laid out in the 2016 Toxic Substances Control Act amendments.

## Air

### Bloomberg Environment

#### **New York to Finally Enforce Its Cleaner-Diesel Law (of 2006)**

<https://news.bloombergenvironment.com/environment-and-energy/new-york-to-finally-enforce-its-cleaner-diesel-law-of-2006>

**Keshia Clukey**

- Law requires state, those contracting with the state to retrofit or retire heavy duty diesel vehicles by Jan. 1
- Contractors worry about enforcement; violations could cost up to \$26,000

Building and construction companies doing business with New York state will have to retrofit or replace their older diesel vehicles by year's end because no language to block the requirement—enacted more than a decade ago—was passed by the Legislature this year.

A bill (A.11340/S.8185) known as the Diesel Emissions Reduction Act, or DERA, passed in 2006, required the fleet of heavy-duty vehicles owned by the state, and businesses doing work for the state, to use ultra-low sulfur fuel. It also required those vehicles purchased before 2007—such as dump trucks, cranes, backhoes, and others used in construction—to be retrofitted or phased out to reduce diesel exhaust particle pollution.

Lawmakers for years yielded to concerns of the building and construction industry, putting provisions in state law to delay the implementation. But in the 2019 legislative session that ended last week, the Democratic-lead Legislature afforded—if quietly—no such respite. So the provision will take effect Jan. 1, 2020.

“We’re finally going to get these vehicles off the road,” said Conor Bambrick, air and energy director at Environmental Advocates of New York. “It’s been too long that we’ve had to wait, to suffer under the pollution that these vehicles are causing. It’s really too bad that we’ve had to wait this long.”

#### **Most State-Owned Vehicles in Compliance**

State officials said about 97 percent of state-owned vehicles already are compliant, but it’s difficult to estimate how many contractors would be affected.

Industry advocates are now looking to the state to provide details on how it will enforce the law. They cite concerns about the cost of compliance, particularly for small businesses that may not have phased out their older vehicles yet.

“It’s a challenge both for the private sector that does work for the state, and also for the state agencies,” Mike Elmendorf, president and chief executive officer for Associated General Contractors of New York State.

The implementation of the law comes after the state Legislature last week passed its version of the Green New Deal, setting the most aggressive clean-energy targets in the country. The climate bill, which still must be signed by Gov. Andrew M. Cuomo (D), calls for an 85% reduction in economywide emissions from 1990 levels by 2050.

Advocates have lauded it as the best environmental legislative session in a generation, attributing the passage of many bills that have stalled for years to the new Democratic majority in the Senate. The change helped allow the diesel fuel emissions law to fully take effect, they said.

The state's law regarding diesel fuel emissions came as the Environmental Protection Agency in 2006 began phasing in more stringent ultra-low sulfur regulations, limiting sulfur content to 15 parts per million in diesel fuel.

California, which has some of the worst air quality in the nation, has been at the forefront of regulating diesel fuel, having passed its low-sulfur diesel fuel regulations in 2003.

#### State Compliance

Under New York's law, diesel-using vehicles that weigh 8,500 pounds or more that the state or businesses contracting with the state use must be retired or retrofitted to reduce pollution, including emissions of nitrogen oxides.

This doesn't apply to vehicles purchased after 2007, after which all heavy-duty diesel vehicles were required by the EPA to comply with the more stringent emissions standards.

The law sets out a phase-in period, which has since passed. It also provides a waiver, allowing the vehicle to be used as is for one year, after which it must be retired.

"State agencies have made substantial progress to comply with DERA, both through retrofits and replacing older vehicles," according to a statement from the state Department of Environmental Conservation.

Of the 11,969 on-road heavy duty diesel vehicles subject to the law, about 97 percent were compliant in 2017, according to the most recent data available from the department.

Most— about 7,369—of the state's vehicles are already certified to 2007 and newer standards, according to the DEC. An additional 4,088 were retrofitted, and 199 received waivers, according to the department. Some federal funds can be used to replace non-compliant vehicles.

About 90 percent—about 2,600—of the state Department of Transportation's vehicles are in compliance, and the rest are expected to be by the end of the year, department spokesman Glenn Blain said in an email. The department has been phasing out its high-emission diesel vehicles, the cost of which has been factored into its annual vehicle replacement program, he said.

#### Costs to Contractors

It's unclear how many contractors will be affected, said Elmendorf of the state general contractors association. The association has around 600 members statewide, including general, specialty, and subcontractors.

Many of the vehicles already have aged out and have been replaced due to the length of time since the law's passage, Elmendorf said. The smaller companies don't buy as much equipment, or as frequently, so they may have more difficulty complying with the law.

The law won't impact subcontractors or material supplies, like those transporting sand and gravel to a construction site, as a result of a court decision on a lawsuit challenging the DEC's regulations.

Purchasing new equipment can be extremely costly, but retrofitting also comes at a price, said Dave Hamling, president and CEO of the New York Construction Materials Association.

The DEC estimated costs to install retrofits to be between \$10,000 and \$20,000, noting that it may exceed the value of the vehicle.

The trade associations argue that retrofits often produce undesirable results, decreasing fuel efficiency, or output and horsepower. The result: either more trucks on the road or more fuel being used, Hamling said.

And noncompliance will be just as costly.

The state Department of Environmental Conservation will enforce the law through contractual language, according to an emailed statement from the department. A first violation of air pollution regulations would result in a minimum fine of \$500 and maximum of up to \$18,000, according to the department. The fine for subsequent violations is \$26,000.

The trade associations and their members are waiting to see how the state rolls out the 13-year-old law, and more importantly, how it's enforced, Hamling said.

"How are they going to enforce against the private sector company when the state vehicle may be on the same site that's non-compliant?" he asked. "There's some real significant policy issues at work here."

### **Bloomberg Environment**

#### **Sterigenics Plant Could Reopen Under New Permitting Plan (1)**

<https://news.bloombergenvironment.com/environment-and-energy/sterigenics-plant-could-re-open-under-new-permitting-plan>

**Stephen Joyce**

- Company plant, now shuttered, could open soon
- Permits could inform U.S. EPA plans to regulate commercial sterilizers

Sterigenics U.S. LLC 's legal standoff with Illinois regulators may be ending, allowing the company's medical sterilization plant in Willowbrook to start back up again.

The company announced June 27 it had applied to the Illinois Environmental Protection Agency for new clean air operating permits at its Willowbrook medical sterilization facility. Certification, emissions limits, and other elements of the permit application align with two laws signed by Gov. J. B. Pritzker (D) last week, which he said create the country's toughest emissions requirements for the chemical.

Exposure to ethylene oxide carries an elevated cancer risk, the federal EPA has said. But the shutdown of the sterilization facility has also prompted shortages in some medical devices that can't be properly cleaned.

The Illinois EPA typically works with companies to draft permits as part of the application process before they go out for public comment, making it likely permits will be approved. This would end an ongoing legal battle that shuttered the facility, allowing it to reopen.

The approved permits could also help inform the U.S. EPA as it works on making final a new rule on commercial sterilizers. The release of that rule is imminent.

In its application, Sterigenics proposed alterations at its facility, including the installation of a new continuous emissions monitoring system—a technology not required by regulation or typically deployed at medical sterilization facilities. The permit application also provides information to comply with new Illinois legislation, certifying the facility will be using technology that provides the greatest reductions of ethylene oxide emissions currently available once the company makes improvements to the facility.

Medline Industries Inc., which also operates a medical sterilization facility in Waukegan that uses ethylene oxide, applied for new permits limiting emissions of the chemical to 150 pounds per year. Like the Sterigenics application, the permits

also require the facility to have negative enclosure technology, which essentially sucks air into an interior emissions system, even when doors are opened, to ensure no fugitive gases can escape. Both permits also call for the facilities to use a single common stack for all post-control emissions.

The Sterigenics upgrade is intended to further reduce ethylene oxide emissions from the sterilization process by adding additional controls, the permit said. The company said the upgrades are being proposed even though the facility has been in compliance with all existing state and federal requirements.

Medline did not comment on the timing of the approvals of their permits. Kim Biggs, a spokeswoman for the Illinois EPA, did not immediately respond to a request for comment.

(Adds Sterigenics comment, updates throughout.)

## **EcoWatch**

### **EPA Air Quality Chief Resigns Over Ethics Investigation**

<https://www.ecowatch.com/epa-air-quality-chief-resignation-2639004378.html>

**Jordan Davidson**

So little time, so much damage done. That's the legacy left by Bill Wehrum who spent only one and a half years as the U.S. Environmental Protection Agency's (EPA's) top air quality official before announcing that he will step down this weekend under the cloud of a federal ethics investigation over possible conflicts of interest. His resignation follows conflicting statement he made to Congress about his industry connections, according to Politico.

Mr. Wehrum worked as a lobbyist and lawyer for the oil, gas and coal industries before joining the Trump administration, but did not relinquish ties to his clients. The House Energy and Commerce Committee opened an inquiry into whether he improperly worked to reverse an enforcement action in order to help DTE Energy, a former client. Watchdog groups also said he crossed a line when he gave presentations to former clients and when he worked on policy that affected litigation in which his former firm, Hunton & Williams, was involved, as The New York Times reported.

"William Wehrum was emblematic of the administration's struggles to remain ethical," said Noah Bookbinder, executive director of Citizens for Responsibility and Ethics in Washington, in a statement reported by The Washington Post. "While it's a good thing that Wehrum's potential ethics problems will no longer affect the agency, the tone is set at the top, and if the EPA is to clean up the mess started by Scott Pruitt, the Trump administration needs to get serious about policing its ethical failures."

In his short tenure in the EPA, which started in November 2017, Wehrum has proven himself a nimble deregulator. He was instrumental to shrinking the EPA's reach, rolling back Obama-era rules meant to lower greenhouse gas emissions, slowing fuel-efficiency requirements for cars and trucks, and rewriting the way the EPA calculates costs and benefits to favor the fossil fuel energy sector — essentially rewriting the way the agency measures the health consequences of air pollution, as The Washington Post reported. He was also the chief architect of the Affordable Clean Energy rule, which eased the path for more coal-fired power plants to open, according to The New York Times.

"Mr. Wehrum oversaw the most relentless rollback of clean air, climate and health safeguards in E.P.A.'s history," said John Walke, clean air director for the Natural Resources Defense Council, as The New York Times reported. "E.P.A. strengthened not a single meaningful air quality or climate safeguard during his tenure."

Environmental activists are pleased to see him leave.

"Wehrum did more damage to the Clean Air Act than any other person in the last 40 years," said Brett Hartl, government affairs director for the Center for Biological Diversity, as Politico reported. "His legacy will be more premature deaths, more hospital visits and more asthma attacks to our most vulnerable citizens."



Wehrum's ethical mishaps follow a pattern of behavior from senior Trump administration officials who have resigned while under investigation, including four Cabinet members — EPA Administrator Scott Pruitt, Health and Human Services Secretary Tom Price, Interior Secretary Ryan Zinke, and Veterans Affairs Secretary David Shulkin — along with other senior staffers such as Federal Emergency Management Agency Administrator William "Brock" Long.

Also, the Department of Interior's Office of Inspector General is currently investigating Secretary David Bernhardt and six current or former top appointees for actions similar to Wehrum's — improper dealings with their former employers or clients on department-related business, as The Washington Post reported.

As for Wehrum's life after the EPA, one Senate Democrat who asked for an investigation into Wehrum predicted a profitable future with the fossil fuel industry.

"I can't wait to see where Bill Wehrum lands once he's out the door," said Senator Sheldon Whitehouse (D-R.I.) in a statement, as reported by The Washington Post. "What do you bet it's with one of the fossil fuel interests he has served so well as air chief, delivering one big handout after another?"

## **Mining**

### **Bloomberg Environment**

#### **Opponents of Pebble Mine Weigh Options in Wake of EPA Lifeline**

<https://news.bloombergenvironment.com/environment-and-energy/opponents-of-pebble-mine-weigh-options-in-wake-of-epa-lifeline>

**Stephen Lee**

- Environmentalists mull appropriations rider, litigation to block Pebble Mine project
- EPA says it will reconsider water limits, could reinvigorate stalled project

Opponents of the planned Pebble Mine in Alaska say they still have plenty of arrows in their quiver to fight the project, shortly after the EPA said it will consider undoing proposed water pollution limits that have hamstrung the project since 2014.

The opponents' most potent weapon now is an amendment attached by Rep. Jared Huffman (D-Calif.) to a House spending bill that would block the U.S. Army Corps of Engineers from continuing its work on the mine's environmental review—a necessary step for the mine to be permitted.

That rider was included in a "minibus" package that includes funding for the Defense, Energy, and State departments, among others. The measure passed the House on June 19 by a 226-203 vote, mostly along party lines.

The Pebble opponents' hope is that the rider becomes law and stalls the Army Corps' work long enough for a Democratic president to win the White House in 2020, and that the new chief executive appoints officials who oppose the mine.

#### **Senate, Trump Still in Question**

There's no certainty that the amendment will be adopted by the Republican-controlled Senate.

Should that happen, the likelihood of President Donald Trump refusing to sign the measure—thus leaving nearly \$1 trillion of congressionally approved funding in the lurch—seems remote. Still, some of Pebble's foes say they're not ruling anything out.

"I don't think it's a good idea to speculate about what somebody like Donald Trump is going to do on any given issue, at any moment in time," said Joel Reynolds, a senior attorney with the Natural Resources Defense Council, a nonprofit advocacy group.

Alannah Hurley, executive director of the United Tribes of Bristol Bay, said her group will now aggressively lobby Alaska's congressional delegation—Sens. Lisa Murkowski (R) and Dan Sullivan (R), along with Rep. Don Young (R)—to support the Huffman amendment.

Beyond those lawmakers, several Republicans with major companies in their districts also have opposed the mine, said Taryn Kiekow Heimer, a senior advocate with the NRDC.

The fight also breaks down along unusual lines, Heimer said, because it isn't about Republicans versus Democrats, or environmentalists versus oil companies.

"This has always been an issue about tribes and commercial businessmen—fishermen, chefs, Whole Foods, Hy-Vee, Patagonia, those really big names," she said. "When you put that together, there is a really strong case that, if Republicans are going to need to make some concessions on the appropriations side," this might be a good place to do it.

Pebble's backers have long said the mine will be built and managed in an environmentally sensitive way that won't harm the water or land. They also say the project will bring much-needed employment to Bristol Bay.

#### Litigation Against Permits

Another tool Pebble's opponents plan to use is litigation to challenge the Corps' environmental impact statement. That step can only be taken once the EIS is completed and a record of decision is issued, which the Corps says won't happen until mid-2020.

But Nelli Williams, Trout Unlimited's Alaska program director, said advocates have been combing through the draft EIS and documenting "flaws, data gaps, and inadequacies" in preparation for an eventual lawsuit.

"There is an absolute certainty that, if the permit is issued, it will be challenged in court," Reynolds said.

The Army Corps has said repeatedly that its process has been thorough, careful, and measured.

A third avenue of attack is a pair of complaints filed in April to the Securities and Exchange Commission and the British Columbia Securities Commission alleging that Pebble owner Northern Dynasty Minerals Ltd. misled investors about the size of the mineral lode available at the mine site.

In those complaints, the Toronto-based Justice and Corporate Accountability Project charged that Northern Dynasty has told investors that Pebble contains 11 billion tons of minerals, but that the company's permitting documents show the current mine plan would only be for 1.4 billion tons.

Vancouver-based Northern Dynasty has called the allegations "baseless and untrue and meant only to damage the reputation of Northern Dynasty Minerals Ltd."

"We have been clear and consistent that the permit application currently being evaluated by the US Army Corps of Engineers only seeks to develop a portion of the total Pebble mineral resource," a Northern Dynasty spokesman said in an email.

The SEC hasn't commented on whether it will investigate the matter. If it does, and it finds that the allegations have merit, the possible outcomes include fines, lawsuits from investors, and delisting from public stock exchanges, said Eric Chaffee, a securities law professor at the University of Toledo.

None of those outcomes would directly affect Pebble's permitting, but they could impact the company's bankroll and scare off new investors, which the company will eventually need to fund the mine's construction, said Bonnie Gestring, Northwest program director at Earthworks.

#### Mine Supporters Rejoice

Meanwhile, Northern Dynasty and Pebble's supporters are rejoicing over the Environmental Protection Agency's June 26 announcement.

"The idea that development projects can be vetoed before they are even proposed or a comprehensive, permitting process has been undertaken is one that should not take root in this country," Tom Collier, chief executive officer of the Pebble Partnership, said in a statement.

"It is wholly inconsistent with the rule of law and a serious deterrent to resource investment and industrial development, and it is for those reasons that we expect the proposed determination to be withdrawn by this administration," Collier said.

Murkowski also hailed the news, saying she has "never supported preemptive restrictions for any project in Alaska," and that it is "inappropriate for an agency to prejudge a project years before its developer has filed a permit application."